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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/909,130	08/11/1997	JAMES E. COX	33019/138/10	1242

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EXAMINER

DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
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3763

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DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/909,130

Applicant(s)

COX ET AL.

Examiner

Matthew F DeSanto

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,5 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,5 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Saab (USPN 4,820,349).

Saab discloses a balloon catheter with a perfusion lumen extending through the balloon, and having a proximal end, proximate the proximal end of the balloon, and wherein the perfusion lumen decreases distally in cross section within the inflatable envelope portion. (See Figure 1 and entire reference)

2. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Sahota (USPN 5,090,958).

Sahota discloses a balloon catheter with a guidewire lumen and a perfusion lumen, wherein the guidewire lumen is capable of being collapsed. (Figure 1, 3a, 10, and entire reference)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 5, 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahota as applied above, and further in view of Saab.

Sahota discloses the claimed invention but fails to teach wherein the perfusion lumen of a balloon catheter includes a metallic ribbon coil support, and wherein the perfusion lumen distal end has a smaller cross section than the proximal end.

Saab teaches a balloon catheter having a metallic ribbon coil support, and wherein the perfusion lumen distal end has a smaller cross section than the proximal end.

At the time of the invention it would have been obvious for one of ordinary skill in the art to combine the teachings of Sahota with Saab because Saab discloses the use of a metallic ribbon coil support, and the perfusion lumen distal end having a smaller cross section than the proximal end for the purpose of better support/strength and maneuverability. It is well known in the catheter art to use a metallic ribbon coil for support and strengthening of a lumen as well as for radiopaque features, and the proximal end having a larger cross section as compared to the distal end of the lumen is also well known in the art to help in promoting easier flexibility and maneuvering of the catheter tip within the patient.

Response to Arguments

5. Applicant's arguments filed 1/30/03 have been fully considered but they are not persuasive.

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6. The applicant argues that Saab does not disclose a perfusion lumen. The examiner disagrees with this statement because in Saab on column 5, lines 40-50, the reference discloses injecting a radiopaque dye into the patient, thus making the lumen a perfusion lumen. The applicant gives a special mean to perfusion lumen, but since this is not in the claim, the examiner gives no patentable weight to the argument.

7. Next the applicant argues the main lumen is not proximally the proximal end of the balloon. The examiner disagrees and refers the applicant to figure 2.

8. The last argument deals with Sahota and that the guidewire lumen is not disposed in the perfusion lumen as well as the guidewire lumen is not collapsible. With regards to the guidewire lumen being disposed in the perfusion lumen, this is shown in Figures 3a, and 9. With regards to the guidewire lumen not being collapsible, the reference makes discloses that in order for the lumen not to collapse a wire must be in the lumen (see Column 5, lines 25-34), thus making the lumen collapsible. The examiner would also like to note that the guidewire is not positively recited and therefore, the examiner needs to find a lumen that is capable of collapsing, and hence the prior art of Sahota reads on the claim, since Sahota states the reason for using the wire is so the lumen does not collapse.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.



Matthew DeSanto
Art Unit 3763
July 24, 2003



MICHAEL J. HAYES
PRIMARY EXAMINER